

JUN 24 2015

## NOT FOR PUBLICATION

SUSAN M. SPRAUL, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

### UNITED STATES BANKRUPTCY APPELLATE PANEL OF THE NINTH CIRCUIT

In re:	)	BAP No.	CC-14-1363-KuDTa
	)		
GEORGE CHIKE IFEORAH,	)	Bk. No.	12-15356
	)		
Debtor.	)	Adv. No.	13-01048
	)		
GEORGE CHIKE IFEORAH,	)		
	)		
Appellant,	)		
	)		
v.	)	<b>MEMORANDUM*</b>	
	)		
RYAN FLEGAL; INVEST & DESIGN,	)		
LLC,	)		
	)		
Appellees.	)		
	)		

Argued and Submitted on June 18, 2015  
at Pasadena, California

Filed - June 24, 2015

Appeal from the United States Bankruptcy Court  
for the Central District of California

Honorable Mark S. Wallace, Bankruptcy Judge, Presiding

Appearances: Andrew Edward Smyth argued for appellant George  
Chike Ifeora; Mark M. Sharf of Merritt, Hagen &  
Sharf LLP argued for appellees Ryan Flegal and  
Invest & Design, LLC.

Before: KURTZ, DUNN and TAYLOR, Bankruptcy Judges.

\*This disposition is not appropriate for publication.  
Although it may be cited for whatever persuasive value it may  
have (see Fed. R. App. P. 32.1), it has no precedential value.  
See 9th Cir. BAP Rule 8024-1.

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1       The restaurant did not open for business until May 2005. By  
2 that time, Ifeorah and McCraw had paid for and installed a modern  
3 commercial kitchen with a full array of expensive kitchen  
4 equipment. In addition to the high-end kitchen equipment,  
5 Ifeorah and McCraw also purchased and installed in the restaurant  
6 dining areas and restrooms a number of crystal and polished brass  
7 chandeliers. Ifeorah and McGraw spent in excess of \$200,000 on  
8 these improvements and equipment.

9       After entering into the lease but before the restaurant  
10 opened for business, Ifeorah and McCraw formed a Nevada  
11 corporation known as Oasis Restaurant, Inc., with Ifeorah holding  
12 a 60% interest and McCraw holding a 40% interest. They  
13 transferred ownership of all of the personal property purchased  
14 for the restaurant to the corporation.

15       For a year or two, the restaurant did reasonably well, and  
16 Ifeorah timely paid the rent due under the lease. However,  
17 beginning in August 2007, Ifeorah defaulted on his lease  
18 payments. Ifeorah thereafter made some lease payments from time  
19 to time, but never managed to get current on his rental  
20 obligations. Consequently, in May 2008, Flegal commenced an  
21 unlawful detainer proceeding to recover possession of the  
22 property. In June 2008, on the day of the unlawful detainer  
23 trial, the trial judge directed the parties to discuss settlement  
24 in the courthouse hallway, and the parties were able to reach an  
25 agreement, which they memorialized in a written settlement  
26 agreement.

27       Under the settlement agreement, Ifeorah agreed to pay \$8,000  
28 immediately to Flegal, of which \$7,000 was applied to accrued

1 late fees and interest and \$1,000 was applied to past-due rent.  
2 Flegal in turn agreed to permit Ifeorah to retain occupancy of  
3 the rental property, provided that Ifeorah timely made the lease  
4 payments according to the lease payment schedule set forth in the  
5 settlement agreement. That schedule permitted Ifeorah to defer a  
6 portion of his monthly rental payments during the second half of  
7 2008, with rental payments returning to the original lease amount  
8 in January 2009. All deferred rent (including both the rent  
9 deferred during the second half of 2008 and the \$32,700 in rent  
10 accrued but unpaid at the time of the settlement) was due on or  
11 before June 30, 2009. If all amounts set forth in the settlement  
12 agreement were timely paid, then the settlement would terminate  
13 by its own terms and all of the original lease terms would be  
14 deemed reinstated. However, if Ifeorah defaulted on the payments  
15 provided for in the settlement, then Ifeorah agreed to  
16 voluntarily surrender possession of the real property without  
17 Flegal having to incur the time and expense of further unlawful  
18 detainer proceedings.

19 In exchange for Ifeorah's retention of possession, the  
20 principal benefit Flegal anticipated from the settlement was  
21 Ifeorah's promise, if he moved out, to leave in place a "turn-key  
22 kitchen facility," which promise was set forth in the settlement  
23 as follows:

24 If Tenant does move out, tenant will leave a turn-key  
25 operational commercial kitchen facility. This includes  
26 all kitchen equipment. Tenant may still sell the  
27 business to a third party subject to approval by the  
28 Lessor and provided Lessor is paid the total balance  
owed. This paragraph will no longer apply if Tenant  
pays the full balance owed to Lessor by June 30, 2009.

1 Settlement Agreement (June 23, 2008) at ¶ 5.<sup>3</sup>

2 In turn, in order to assure Flegal that he had received the  
3 promise regarding the kitchen equipment from the right party -  
4 the owner of the equipment - the settlement agreement further  
5 provided:

6 Tenant warrants that Tenant is the owner of all of the  
7 above mentioned fixtures and equipment (as mentioned in  
8 paragraph 5) and that there are no liens or leases for  
9 any of these items. Tenant agrees not to sell,  
10 transfer or lease any of this existing equipment  
without the prior written approval from the Lessor.  
This paragraph will no longer apply if Tenant pays the  
full balance owed to Lessor by June 30, 2009.

11 Settlement Agreement (June 23, 2008) at ¶ 7. Ifeorah obviously  
12 knew and understood the contents of this warranty and its  
13 relationship to paragraph 5 of the settlement; his initials  
14 appeared next to a one-word interlineation excising the word  
15 "furniture" from the warranty.

16 Ifeorah timely made all of his monthly lease payments, as  
17 adjusted by the settlement agreement, except for the balloon  
18 payment in the amount of \$41,520 due on June 30, 2009. After  
19 Ifeorah defaulted on the \$41,520 payment, he from time to time  
20 made some lease payments, but he never managed at any time  
21 thereafter to cure his June 2009 default or to timely make all of  
22 his rental payments due under the lease. Nonetheless, Ifeorah  
23 never voluntarily moved out of the restaurant property, nor did  
24 Flegal commence a new unlawful detainer proceeding until February  
25 2012. Flegal's delay in seeking possession of the rental

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27 <sup>3</sup>There is no dispute that Ifeorah was referred to as the  
28 tenant in the settlement agreement.

1 property apparently was due in part to the two bankruptcy cases  
2 Ifeorah commenced in 2009, in part to the irregular lease  
3 payments Ifeorah made from time to time, and in part to  
4 negotiations with a third party named Marsha Tekeste, who  
5 expressed an interest in buying Ifeorah's and McCraw's restaurant  
6 business and/or in renting the property from Flegal. Both of  
7 Ifeorah's 2009 bankruptcy cases were dismissed.

8 In April 2012, Ifeorah filed his third bankruptcy case - a  
9 chapter 11 case - which he voluntarily converted to chapter 7 in  
10 November 2012. In turn, Flegal obtained relief from stay in  
11 August 2012 to pursue his state court remedies, filed a new  
12 unlawful detainer proceeding in October 2012, and obtained an  
13 unlawful detainer judgment in December 2012.

14 Under threat of eviction by the Los Angeles County Sheriff's  
15 Office, Ifeorah finally surrendered possession of the rental  
16 property at the end of December 2012. However, before  
17 surrendering the premises, Ifeorah hired contractors, trucks and  
18 machinery to strip most of the kitchen equipment from the rental  
19 property. In addition to the kitchen equipment, Ifeorah removed  
20 the chandeliers and certain other fixtures from the rental  
21 property, in violation of the settlement agreement, the lease or  
22 both. When Flegal discovered that Ifeorah was attempting to  
23 remove all of these items from the premises, Flegal contacted the  
24 Inglewood Police Department. But the police refused to  
25 intervene, concluding that the disagreement between Flegal and  
26 Ifeorah was a landlord-tenant dispute and hence a civil rather  
27 than a criminal matter.

28 After recovering possession of the rental property, Flegal

1 did not succeed in re-renting the property until May 2013.  
2 Marsha Tekeste had for some time expressed an interest in renting  
3 the premises from Flegal; however, in light of the condition of  
4 the leasehold upon Ifeorah vacating the premises, Flegal was  
5 forced to re-negotiate his agreement with Tekeste because their  
6 initial agreement contemplated Tekeste's use and enjoyment of a  
7 turn-key commercial kitchen facility. After making several  
8 significant monetary concessions in Tekeste's favor, Flegal  
9 reached a new agreement with Tekeste, and Tekeste took possession  
10 of the premises.

11 In February 2013, Flegal commenced an adversary proceeding  
12 against Ifeorah objecting to his discharge under § 727 and  
13 seeking to except from discharge under § 523(a)(2) and (6) the  
14 debt Ifeorah owed to Flegal. In relevant part, Flegal alleged  
15 that Ifeorah knowingly and intentionally deceived Flegal by  
16 misrepresenting in the settlement agreement that he (Ifeorah)  
17 owned the equipment when in reality Oasis Restaurant, Inc. owned  
18 the equipment. In addition to this misrepresentation, Flegal  
19 further alleged that Ifeorah falsely promised that, if he moved  
20 out, he would leave a turn-key commercial kitchen facility.  
21 According to Flegal, Ifeorah never intended to honor this  
22 promise; he only made this promise to fraudulently induce Flegal  
23 to enter into the settlement agreement.

24 After a trial on the merits, the bankruptcy court ruled in  
25 favor of Flegal on his § 523(a)(2)(A) claim. The court  
26 ultimately ruled that, as result of Ifeorah's fraudulent conduct  
27 (the false promise regarding retention of the equipment in place  
28 and the misrepresentation regarding ownership of the equipment),

1 Flegal was entitled to an exception to discharge judgment in the  
2 amount of \$268,735.98. This judgment consisted of:  
3 (1) \$141,722.23 in accrued but unpaid rent, including interest at  
4 the lease rate of 10%; (2) \$51,555.00, which represented the fair  
5 market value of the equipment he was supposed to have received  
6 under the settlement agreement; (3) punitive damages of \$25,000;  
7 and (4) attorney's fees of \$50,458.75.<sup>4</sup> The court later entered  
8 an amended judgment dismissing Flegal's other claims for relief,  
9 but leaving undisturbed the judgment in favor of Flegal under  
10 § 523(a)(2)(A).

11 Ifeorah timely filed his notice of appeal.

#### 12 JURISDICTION

13 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.  
14 §§ 1334 and 157(b)(2)(I) and (J). We have jurisdiction under  
15 28 U.S.C. § 158.

#### 16 ISSUE

17 Did the bankruptcy court correctly determine that Ifeorah's  
18 indebtedness to Flegal was nondischargeable under § 523(a)(2)(A)?

#### 19 STANDARDS OF REVIEW

20 We review de novo the bankruptcy court's legal conclusions,  
21 and we review for clear error its factual findings as to whether  
22 the requisite nondischargeability elements are present. Tallant

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24 <sup>4</sup>Ifeorah did not challenge in his opening appeal brief the  
25 punitive damages award, the attorney's fees award, or the accrual  
26 of interest at the lease rate. Accordingly, we will not further  
27 discuss these aspects of the bankruptcy court's damages award.  
28 See Christian Legal Soc'y v. Wu, 626 F.3d 483, 487-88 (9th Cir.  
2010) ("We review only issues [that] are argued specifically and  
distinctly in a party's opening brief."); Brownfield v. City of  
Yakima, 612 F.3d 1140, 1149 n.4 (9th Cir. 2010) (same).



1 v. Kaufman (In re Tallant), 218 B.R. 58, 63 (9th Cir. BAP 1998).  
2 Findings of fact are clearly erroneous only if they are  
3 illogical, implausible, or without support in the record. Retz  
4 v. Samson (In re Retz), 606 F.3d 1189, 1196 (9th Cir. 2010).

#### 5 **DISCUSSION**

6 To except a debt from discharge under § 523(a)(2)(A), a  
7 creditor must prove by a preponderance of the evidence the  
8 following elements:

- 9 (1) the debtor made . . . representations;
- 10 (2) that at the time he knew they were false;
- 11 (3) that he made them with the intention and purpose of  
deceiving the creditor;
- 12 (4) that the creditor relied on such representations;  
[and]
- 13 (5) that the creditor sustained the alleged loss and  
damage as the proximate result of the  
misrepresentations having been made.

14 Gomeshi v. Sabban (In re Sabban), 600 F.3d 1219, 1222 (9th Cir.  
15 2010) (quoting Am. Express Travel Related Servs. Co. v. Hashemi  
16 (In re Hashemi), 104 F.3d 1122, 1125 (9th Cir. 1996)).

17 Ifeorah contends that his so-called misrepresentation  
18 regarding ownership of the kitchen equipment was insignificant  
19 and immaterial. Ifeorah insists that there was no material  
20 difference between his owning the equipment and Oasis Restaurant,  
21 Inc. owning the equipment. We have at least two problems with  
22 this argument. First, it ignores the fact that the bankruptcy  
23 court also found that Ifeorah made a fraudulent false promise,  
24 which is sufficient grounds to support a § 523(a)(2)(A) claim  
25 separate and distinct from the misrepresentation regarding  
26 ownership of the equipment. See Barrack v. McCrary  
27 (In re Barrack), 217 B.R. 598, 606 (9th Cir. BAP 1998) ("A  
28 promise made with a positive intent not to perform or without a

1 present intent to perform satisfies § 523(a)(2)(A).”) (quoting  
2 Rubin v. West (In re Rubin), 875 F.2d 755, 759 (9th Cir. 1989)).

3 Second, the bankruptcy court found that Ifeorah’s deceit  
4 regarding the equipment was material. As a matter of California  
5 law, we agree with the bankruptcy court that there was a material  
6 difference between Ifeorah’s property and Oasis Restaurant,  
7 Inc.’s property, because the former and the latter were separate  
8 and distinct entities. See Communist Party v. 522 Valencia,  
9 Inc., 35 Cal. App. 4th 980, 993 (1995). Additionally, as a  
10 factual matter, there was ample evidence in the record that led  
11 the bankruptcy court to conclude that the representation  
12 regarding ownership of the equipment was material and that Flegal  
13 justifiably relied on that representation. As the bankruptcy  
14 court pointed out, the potential opportunity for Flegal to retain  
15 the equipment upon termination of the lease was the key incentive  
16 for Flegal to enter into the settlement. Furthermore, Flegal  
17 testified that, if he had known that Oasis Restaurant, Inc. owned  
18 the equipment, he would not have entered into the settlement  
19 agreement unless the corporation had also promised Flegal he  
20 could keep the equipment in the event Ifeorah moved out. Under  
21 these circumstances, we cannot say that it was illogical,  
22 implausible or without support in the record for the bankruptcy  
23 court to find that who owned the equipment was material.<sup>5</sup>

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25 <sup>5</sup>Ifeorah alternately argues that, because McCraw signed off  
26 on the settlement agreement on behalf of herself and Oasis  
27 Restaurant, Inc., Flegal received the functional equivalent of  
28 Oasis’s promise that he could keep the kitchen equipment.  
However, the settlement agreement explicitly states that McCraw’s  
signature only acknowledged that neither Oasis nor McCraw had or  
(continued...)

1       Ifeorah further contends that it is impossible to logically  
2 reconcile the bankruptcy court's finding that Ifeorah intended to  
3 pay the rent if he could with its finding of fraud. But  
4 Ifeorah's second argument depends on a mischaracterization of  
5 what the court found. According to Ifeorah, the bankruptcy  
6 court's fraud finding related to his promise to make lease  
7 payments. This is simply wrong. As set forth above, Ifeorah's  
8 misrepresentation and his false promise both concerned the  
9 kitchen equipment and did not directly implicate his promise to  
10 pay rent. The court's findings on this point were supported by  
11 the record. The court inferred from the time, expense and effort  
12 Ifeorah invested in acquiring the kitchen equipment that Ifeorah  
13 cared too much for the equipment to not realize that Oasis  
14 Restaurant, Inc. held title to the equipment. The court further  
15 inferred from these same facts that Ifeorah's knowing  
16 misrepresentation regarding ownership of the equipment dovetailed  
17 with an intent, at the time Ifeorah made the promise regarding  
18 the equipment, never to honor that promise. The bankruptcy  
19 court's fraudulent intent finding also is supported by the time,  
20 money and effort Ifeorah invested in removing nearly all of the  
21 kitchen equipment as well as some items that doubtlessly  
22 qualified as fixtures.

23       Thus, the bankruptcy court's findings that Ifeorah knowingly  
24 misrepresented his ownership of the equipment and falsely

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26       <sup>5</sup>(...continued)  
27 would make any "claim to possession of the property" - clearly  
28 referring to the rental property and not the equipment. On this  
record, McCraw's limited acknowledgment is not reasonably  
susceptible to any other interpretation.

1 promised that Flegal could retain the equipment were not clearly  
2 erroneous.

3       Ifeorah then challenges the bankruptcy court's finding that  
4 Flegal relied on Ifeorah's misrepresentation and false promise to  
5 his detriment. In support of this argument, Ifeorah points to  
6 Flegal's testimony admitting that he **would not** have refused to  
7 enter into the settlement if he had known that Oasis Restaurant,  
8 Inc. (instead of Ifeorah) held title to the equipment.

9 Notwithstanding this admission, Flegal's testimony as a whole  
10 supports the bankruptcy court's reliance finding. Flegal  
11 explained that, if Ifeorah had not misrepresented who owned the  
12 equipment, Flegal would have insisted on having as part of the  
13 settlement Oasis Restaurant, Inc.'s promise that Flegal could  
14 retain the equipment in the event Ifeorah moved out. The court  
15 also pointed out that Ifeorah's promise to leave in place a turn-  
16 key commercial kitchen facility was the most significant benefit  
17 Flegal was supposed to receive under the settlement. Therefore,  
18 on this record, the bankruptcy court did not clearly err when it  
19 inferred that, if Flegal had known the true state of affairs  
20 (that Ifeorah had no intention of ever surrendering the  
21 equipment), Flegal would not have entered into the settlement.

22       Ifeorah next contends that his fraud did not proximately  
23 result in any damages to Flegal. In support of his proximate  
24 cause argument, Ifeorah posits that Flegal needed to show that he  
25 had valuable collection remedies at the time the parties entered  
26 into the settlement and that these collection remedies diminished  
27 in value after the settlement agreement was entered into.

28 Ifeorah relies in part on Hung Bank v. Kim (In re Kim), 163 B.R.

1 157, 161 (9th Cir. BAP 1994), aff'd & adopted, 62 F.3d 1511 (9th  
2 Cir. 1995). In turn, In re Kim relied upon Siriani v. Nw. Nat'l  
3 Ins. Co. (In re Siriani), 967 F.2d 302, 305 (9th Cir. 1992).

4 Ifeorah's reliance on In re Kim (and derivatively on  
5 In re Siriani) is misplaced. Both In re Kim and In re Siriani  
6 stand for the general proposition that, when a lender renews or  
7 extends the term of a loan for an additional period of time **but**  
8 **does not part with anything else of value on account of the**  
9 **debtor's fraud**, the lender must establish proximate cause by  
10 showing it had valuable collection remedies that lost value  
11 during the course of the loan extension. Unlike the lenders in  
12 In re Kim and In re Siriani, Flegal here was fraudulently induced  
13 to enter into a settlement agreement pursuant to which he  
14 incurred a significant detriment: he agreed to forego his right  
15 to immediate possession of his rental property even though  
16 Ifeorah at the time had defaulted on rental payments in excess of  
17 \$30,000. Had Flegal not entered into the settlement agreement,  
18 he could have recovered the premises at that time and thereby  
19 would have avoided the accrual and nonpayment of tens of  
20 thousands of dollars in additional rent payments. This is more  
21 than sufficient to satisfy the proximate cause requirement.

22 Ifeorah also contends that the bankruptcy court erroneously  
23 awarded Flegal benefit-of-the-bargain damages. We agree with  
24 Ifeorah that the appropriate measure of damages should be  
25 determined by reference to state law and that Flegal is entitled  
26 to a discharge exception covering all damages flowing from the  
27 fraud. See In re Sabban, 600 F.3d at 1222-24 (citing Cohen v. de  
28 la Cruz, 523 U.S. 213, 223 (1998)). We also note that our task

1 in construing California law is to follow the decisions of the  
2 California Supreme Court or, alternately, if that court has not  
3 yet decided the issue, to predict how the California Supreme  
4 Court would decide it. See Vestar Dev. II, LLC v. Gen. Dynamics  
5 Corp., 249 F.3d 958, 960 (9th Cir. 2001).

6 According to Ifeorah, California law permits fraud victims  
7 to recover in civil actions "out of pocket losses," but does not  
8 permit them to recover the "benefit of the bargain." Aplt. Opn.  
9 Br. at p. 28 (citing Lazar v. Super. Ct., 12 Cal. 4th 631  
10 (1996)). We are perplexed by Ifeorah's citation to Lazar. The  
11 California Supreme court explicitly stated in Lazar that, in  
12 appropriate cases, "fraud plaintiffs may recover 'out-of-pocket'  
13 damages **in addition to benefit-of-the-bargain damages.**" Id. at  
14 646 (emphasis added). The principal issue addressed by the  
15 California Supreme Court in Lazar was "whether [it] should  
16 restrict [on policy grounds] the availability of traditional tort  
17 remedies when they are sought in the employment context." Id. at  
18 644. The Lazar court answered this question in the negative, in  
19 the process reasoning that there was no compelling policy reason  
20 to restrict a defrauded employee from recovering the full array  
21 of compensatory damages which, according to the Lazar court,  
22 potentially included both benefit-of-the-bargain damages as well  
23 as out-of-pocket damages. Id. at 645-46; see also Persson v.  
24 Smart Inventions, Inc., 125 Cal. App. 4th 1141, 1154-55 (2005)  
25 (holding that fraud plaintiff may retain the benefits of the  
26 contract he or she was fraudulently induced to enter into and at  
27 the same time sue for damages for the loss suffered as a result  
28 of the fraud); Denevi v. LGCC, 121 Cal. App. 4th 1211, 1220

1 (2004) (same).

2 We acknowledge that the California legislature generally has  
3 barred fraud plaintiffs from recovering benefit-of-the-bargain  
4 damages when the subject contract is a contract for the purchase,  
5 sale or exchange of property. See Cal. Civ. Code § 3343(a)(1).  
6 Thus, generally speaking, plaintiffs fraudulently induced to  
7 enter into property transactions only may recover as the measure  
8 of their damages, the difference in value between what they  
9 parted with and what they received (also known as out-of-pocket  
10 losses). See Fragale v. Faulkner, 110 Cal. App. 4th 229, 236  
11 (2003). They typically cannot recover the difference in value  
12 between what they actually received and what they were  
13 fraudulently led to believe they would receive (also known as  
14 benefit-of-the-bargain damages). Id.<sup>6</sup>

15 However, Ifeorah has offered no argument explaining why we  
16 should predict that the California Supreme Court would apply Cal.  
17 Civ. Code § 3343 to his settlement agreement with Flegal. Nor  
18 are we independently aware of any reason why we should make such  
19 a prediction. To the contrary, settlement agreements appear to  
20 be beyond the scope of § 3343. See generally Northridge  
21 Homeowners Ass'n v. State Farm Fire & Cas. Co., 50 Cal. 4th 913,  
22 926 (2010) (determining proper measure of damages for fraudulent  
23 inducement to enter into settlement agreement without any

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25  
26 <sup>6</sup>We use the terms “typically” and “generally” because there  
27 are a number of exceptions to the limitation set forth in the  
28 statute. Some of those exceptions are set forth in the statute  
itself (see, e.g., § 3343(a)(3), (4)), while others are judge-  
made exceptions. See Fragale, 110 Cal. App. 4th at 236.

1 reference or citation to Cal. Civ. Code § 3343).<sup>7</sup>

2 Ifeorah alternately argues that, even if Flegal is permitted  
3 to recover benefit-of-the-bargain damages, the bankruptcy court  
4 erred by awarding Flegal a combination of both out-of-pocket  
5 damages and benefit-of-the-bargain damages. Ifeorah asserts that  
6 Flegal had a right to accrued rent, or to the kitchen equipment,  
7 but not both. In so arguing, Ifeorah mischaracterizes Flegal's  
8 entitlements under the settlement agreement. If Ifeorah had not  
9 defrauded Flegal, the settlement agreement would have entitled  
10 Flegal not only to keep the equipment but also to make a claim  
11 for accrued but unpaid rent.

12 In essence, Ifeorah really is arguing that the bankruptcy  
13 court's award of both the value of the equipment and accrued but  
14 unpaid rent amounted to a double recovery in Flegal's favor. We  
15 agree with Ifeorah that California law prohibits fraud plaintiffs  
16 from obtaining a double recovery on account of the defendant's  
17 fraud. See Tavaglione v. Billings, 4 Cal. 4th 1150, 1159 (1993)  
18 ("Double or duplicative recovery **for the same items of damage**  
19 amounts to overcompensation and is therefore prohibited.")  
20 (emphasis added). Nonetheless, there is no double recovery when  
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22 <sup>7</sup>Ifeorah cites to Gen. Leasing Co. v. Anguiano (In re  
23 Anguiano), 99 B.R. 436, 437-38 (9th Cir. BAP 1989), for the  
24 proposition that fraud plaintiffs cannot recover benefit-  
25 of-the-bargain damages in exception to discharge actions.  
26 In re Anguiano is inapposite. That case held on general  
27 equitable grounds that benefit-of-the-bargain damages were  
28 unnecessary to compensate the plaintiff under the specific facts  
and circumstances of that case. Id. at 438. As we explain in  
this decision, we reach the opposite conclusion: benefit-of-the-  
bargain damages were necessary to fully compensate Flegal for his  
losses.



1 the court awards "separate items of compensable damage . . .  
2 shown by distinct and independent evidence." Id.

3 We perceive no double recovery here. The record shows that,  
4 but for Ifeorah's fraud, accrued but unpaid rent would not have  
5 swollen from \$33,700 at the time of the settlement to \$164,514.62  
6 (including interest) by the time Marsha Tekeste began paying rent  
7 in May 2013. In addition, between the time Tekeste's lease began  
8 in 2013 and the resolution of Flegal's adversary proceeding in  
9 2014, at least another \$16,000 in interest would have accrued,  
10 thereby bringing the grand total of accrued but unpaid rent  
11 (including interest) to roughly \$180,000 by the time Flegal  
12 obtained his nondischargeability judgment in July 2014. Even if  
13 we were to subtract from the \$180,000 grand total the \$33,700  
14 already due at the time of the settlement (which Flegal  
15 presumably did not incur as a result of fraud), the record more  
16 than amply supported the bankruptcy court's award of rent  
17 (including interest) in the amount of \$141,722.23.

18 The record indicates that the bankruptcy court calculated  
19 Flegal's rent and interest-related damages in a different manner.  
20 Essentially, the court relied on Flegal's calculations. Even so,  
21 because our calculations lead to a slightly higher amount of  
22 damages, any error of the bankruptcy court in calculating the  
23 amount of this item of damages was harmless from Ifeorah's  
24 perspective. We must ignore harmless error. Litton Loan Serv'g,  
25 LP v. Garvida (In re Garvida), 347 B.R. 697, 704 (9th Cir. BAP  
26 2006).

27 Meanwhile, as a separate and distinct item of compensable  
28 damages, but for Ifeorah's fraud, Flegal would have held a

1 contractual entitlement to retain the kitchen equipment. The  
2 bankruptcy court calculated the amount of this item of damages as  
3 \$51,555.00 - an amount equal to the appraised value of the  
4 equipment Flegal removed from the premises or, alternately, as  
5 roughly equal to the amount of concessions Flegal needed to offer  
6 Tekeste during their re-negotiation of her lease after Ifeorah  
7 stripped the equipment from the premises. Ifeorah has not  
8 demonstrated that the court's calculation of this item of damages  
9 was illogical, implausible, or unsupported by the record.

10 The overarching goal of compensatory tort damages is to make  
11 the plaintiff whole. See Strebel v. Brenlar Invs., Inc.,  
12 135 Cal. App. 4th 740, 749 (2006) (citing Cal. Civ. Code §§ 1709  
13 & 3333). In order to accomplish this goal, the trial court  
14 typically may consider out-of-pocket damages, benefit-of-the-  
15 bargain damages and other measures of damages. Id.; see also  
16 Lazar, 12 Cal. 4th at 646. In sum, so long as Cal. Civ. Code  
17 § 3343 does not apply, a fraud plaintiff may be awarded both  
18 out-of-pocket damages and benefit-of-the-bargain damages if both  
19 measures of damages are necessary to ensure that the fraud  
20 plaintiff is fully compensated for all of his or her separate and  
21 distinct losses flowing from the fraud.

22 The only other argument Ifeorah makes is that Flegal's loss  
23 of the equipment resulted from Ifeorah's conversion rather than  
24 Ifeorah's fraud. Ifeorah's conversion versus fraud argument  
25 fails because it is nothing more than a thinly-disguised attack  
26 on the bankruptcy court's proximate cause finding. Suffice it to  
27 say that proximate cause is a finding of fact, In re Tallant,  
28 218 B.R. at 63, and that Ifeorah has not presented us with

1 anything that comes close to establishing that the bankruptcy  
2 court's proximate cause finding was clearly erroneous. See  
3 Anderson v. City of Bessemer City, N.C., 470 U.S. 564, 574 (1985)  
4 ("Where there are two permissible views of the evidence, the fact  
5 finder's choice between them cannot be clearly erroneous.").

6 **CONCLUSION**

7 For the reasons set forth above, we AFFIRM the bankruptcy  
8 court's nondischargeability judgment.